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26
27 UNITED STATES OF AMERICA,

Civil No. 13-200-LRS

28
29 Plaintiff,

STIPULATED FINAL
INJUNCTION

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31 v.

32
33 PETRIE & SONS, INC., and

34 GUY A. PETRIE,

35
36 Defendants.

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38
39 Final Injunction

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1 Plaintiff, the United States, and defendants Petrie & Sons, Inc., and Guy A.
2 Petrie have stipulated to the following facts, conclusions of law, and final
3 injunction. The parties have requested that the Court find the facts as stipulated
4 and enter the following conclusions of law and agreed final injunction.

5 **Findings of Fact**

6 Based upon the parties' stipulation and the evidence presented at the
7 preliminary injunction hearing on August 7, 2013, the Court finds the following
8 facts:

9 1. For a number of years, defendant Petrie & Sons has repeatedly failed to
10 timely file federal employment tax returns and to timely deposit federal
11 employment taxes.

12 2. Petrie & Sons is wholly controlled by its principal, defendant Guy Petrie.

13 3. As of May 30, 2013, Petrie & Sons owed the United States more than
14 \$750,000.00.

15 4. Petrie & Sons does not have sufficient unencumbered assets to satisfy its
16 outstanding tax liabilities, and if further federal employment tax liabilities accrue,
17 the new liabilities will not be recoverable.

18 5. By failing to file tax returns, by failing to pay over taxes its employees owe
19 to the United States, and by failing to pay the federal employment tax it owes,
20 Petrie & Sons violated numerous federal statutes and regulations. The statutes

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1 Petrie & Sons has violated include 26 U.S.C. §§ 3111 (requiring payment of
2 employer's FICA taxes), 3301 (requiring payment of employer's FUTA taxes),
3 6011 (requiring filing of returns), 6151 (requiring timely filing of returns), 6302
4 (requiring deposit of taxes), and 7501 (requiring withheld taxes to be held in trust
5 for the United States). The regulations include 26 C.F.R. §§ 31.6071(a)-1
6 (requiring employment tax returns to be filed by the end of the month following
7 close of tax period) and 31.6302-1 (requiring deposit of withheld taxes).

8 6. The defendants were aware of these obligations, but failed to meet them, to
9 the detriment of the United States.

10 7. After entry of the Preliminary Injunction on August 7, 2013, Petrie & Sons
11 submitted an electronic payroll tax deposit for which it had insufficient funds in its
12 bank account due to a miscommunication with its accountant. It corrected the
13 mistake promptly. It also promptly corrected two mistakes in the amount of its
14 deposits, one of which was due to an employee failing to report his hours timely.
15 Revenue Officer Denice Davis caught the errors. It also submitted a payroll tax
16 deposit within the 72-hour period required by the Preliminary Injunction that did
17 not post until after the 72-hour period had expired.

18 8. The defendants' conduct has interfered with the administration of the
19 internal revenue laws.

Conclusions of Law

1. To obtain a final injunction to halt conduct that interferes with the internal revenue laws, the United States must demonstrate that the injunction is necessary or appropriate for the enforcement of the internal revenue laws. 26 U.S.C. § 7402(a). In the alternative, the United States must show that it is without an adequate remedy at law and will suffer irreparable injury absent entry of the injunction. *See, e.g., Sundance Land Corp. v. Comm. First Fed. Sav. & Loan Ass'n*, 840 F.2d 653, 661-62 (9th Cir. 1988).

2. When taxes are withheld from an employee's paycheck, but not remitted to the United States, the United States must credit the employee with having paid the taxes anyway. 26 U.S.C. § 31(a)(1). Because Petrie & Sons lacks the means immediately to pay what it already owes the United States, the government will not be able to collect further accrued payroll tax liabilities. Therefore, the United States lacks an adequate remedy at law with respect to future violations.

3. Based upon the defendants' conduct prior to the filing of this case, there is a grave risk that absent entry of a final injunction, Petrie & Sons will once again fail to comply with the federal employment tax laws. Therefore, and because the United States lacks a remedy for future violation, the entry of a final injunction is necessary to prevent irreparable harm to the United States.

1 4. For the foregoing reasons, entry of a final injunction is necessary and
2 appropriate for the enforcement of the internal revenue laws.

3 5. Pursuant to Federal Rule of Civil Procedure 65(c), the United States is not
4 required to give security for entry of an injunction.

5 **Agreed Final Injunction**

6 Now, therefore, entry of a final injunction is authorized under Federal Rule
7 of Civil Procedure 65. Defendant Petrie & Sons, Inc.; its officers, agents, servants,
8 and employees, specifically including but not limited to Guy Petrie; and anyone
9 else who is in active concert or participation with Petrie & Sons, Inc. (collectively
10 referred to as “Petrie & Sons”); and defendant Guy Petrie individually, are

11 **HEREBY ENJOINED** as follows:

12 A. Petrie & Sons shall withhold from its employees’ wages the amounts
13 required by federal law, including the employees’ federal income taxes pursuant to
14 26 U.S.C. § 3402 and the employees’ Federal Insurance Contribution Act taxes
15 pursuant to 26 U.S.C. § 3102.

16 B. Petrie & Sons shall deposit with its bank all amounts withheld from its
17 employees’ paychecks within 96 hours of paying any amount in wages to any
18 person.

1 C. Petrie & Sons shall deposit with its bank the amount it owes in Federal
2 Insurance Contribution Act taxes pursuant to 26 U.S.C. § 3111 within 96 hours of
3 paying any amount in wages to any person.

4 D. Petrie & Sons shall retain receipts for each deposit described in paragraphs
5 B and C and workpapers showing how the amount of each such deposit was
6 calculated. For each deposit made in the four years following entry of this
7 Injunction, within 24 hours of making the deposits described in paragraphs B and
8 C, Petrie & Sons shall transmit copies of the receipts and the workpapers to IRS
9 Revenue Officer Denice Davis by facsimile at 866-879-5486 or by email to
10 denice.y.davis@irs.gov. The United States may designate another recipient of the
11 receipts and workpapers upon reasonable written notice to Petrie & Sons.

12 E. Petrie & Sons shall pay over to the IRS all amounts deposited pursuant to
13 paragraphs B and C according to the semi-weekly schedule set forth in 26 C.F.R. §
14 31.6302-1(c)(2).

15 F. From the time that this Injunction is entered until Petrie & Sons has made
16 all payments to the IRS described in paragraph E, Petrie & Sons shall not assign or
17 transfer any property or rights in property for any reason, nor make any
18 disbursement of funds for any purpose.

19 G. Petrie & Sons shall file every employment tax return required by federal
20 law, specifically including Form 941, Employer's Quarterly Federal Tax Return,
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1 no later than the date that the return is due. For each return filed in the four years
2 after this Injunction is entered, Petrie & Sons shall provide a copy to IRS Revenue
3 Officer Denice Davis by facsimile at 866-879-5486 or by email to
4 denice.y.davis@irs.gov. The United States may designate another recipient upon
5 reasonable written notice to Petrie & Sons.

6 H. Petrie & Sons shall not transfer any money or other property to any other
7 person or entity in order to have the transferee pay the wages of any employee of
8 Petrie & Sons.

9 I. Within 96 hours of the entry of this Injunction, Petrie & Sons shall deliver
10 a copy of this Injunction to each person who has authority to sign checks, disburse
11 funds, or otherwise dispose of the property of Petrie & Sons. If, within the four
12 years following entry of this Injunction, Petrie & Sons hires or retains another
13 person who has such authority, Petrie & Sons shall deliver a copy of this Injunction
14 to the person within 96 hours of hiring or retaining the person.

15 J. Within 96 hours of receiving a copy of this Injunction, each person
16 described in the preceding paragraph shall make the following acknowledgment in
17 writing: "I have received a copy of the Court's Final Injunction in the case *United*
18 *States v. Petrie & Sons, Inc.* I have read the Final Injunction. I will personally
19 determine, prior to signing checks, disbursing funds, or otherwise disposing of the
20 property of Petrie & Sons, Inc., that Petrie & Sons has made all of the payments to
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1 the IRS required by Paragraph E of the Court's Final Injunction." Within 7 days of
2 the day that the acknowledgment is signed, each such acknowledgment shall be
3 provided to IRS Revenue Officer Denice Davis by facsimile at 866-879-5486 or by
4 email to denice.y.davis@irs.gov. The United States may designate another
5 recipient of the acknowledgments upon reasonable written notice to Petrie & Sons.

6 K. If, in the four years following entry of this injunction, defendant Guy
7 Petrie shall begin to operate any other business enterprise that has employees,
8 within seven days, he shall notify IRS Revenue Officer Denice Davis by facsimile
9 at 866-879-5486 or by email to denice.y.davis@irs.gov. The United States may
10 designate another recipient of the notification upon reasonable written notice to
11 Guy Petrie.

12 L. This Final Injunction shall equally apply to any other business enterprise
13 operated by Guy Petrie, as if that enterprise's name were substituted for Petrie &
14 Sons in this Order.

15 **It is so ordered.**

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17 Dated this 19th day of November, 2013.

18
19 *s/Lonny R. Suko*

20 _____
21 LONNY R. SUKO
22 SENIOR U. S. DISTRICT JUDGE